

No. 13-1350 RV

¹ In the complaint, Grieshaber refers to “registration,” which we take to include fees paid for renewal of her license plates.

Findings of Fact

Based upon the complaint, which we take as true for purposes of ruling on the motion for decision on the pleadings, we find the following facts:

1. Prior to June 26, 2013, Grieshaber renewed the registration and license plates on a motor vehicle for a three-year period.²
2. Grieshaber was only able to use one year of the three-year registration and applied to the Director for a refund of the remaining two years.³
3. On June 26, 2013, the Director issued a final decision denying Grieshaber's refund request.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.⁴ Our duty in a tax case is not merely to review the Director's decision, but to find the facts and determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.⁵ Grieshaber argues that a refund is appropriate because the fees were paid for license plates that will never be used. The Director argues that no provision of law authorizes him to issue a refund under these circumstances. The Director is correct.

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.⁶ "When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit."⁷

² While we do not understand how Grieshaber was able to renew her registration and license plates beyond a two-year period, the Director admitted to this allegation in his answer. Therefore, it is uncontested.

³ The amount of the refund request and the date of the refund request are unknown.

⁴ Section 621.050.1, RSMo 2000.

⁵ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. 1990).

⁶ *Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. 1990).

⁷ *State ex rel. Brady Motorfrate, Inc. v. State Tax Comm'n*, 517 S.W.2d 133, 137 (Mo. 1974).

Section 301.140⁸ provides:

2. In the case of a transfer of ownership *the original owner* may register another motor vehicle under the same number, upon the payment of a fee of two dollars, if the motor vehicle is of horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, not in excess of that originally registered. When such motor vehicle is of greater horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a greater fee is prescribed, applicant shall pay a transfer fee of two dollars and a pro rata portion for the difference in fees. When such vehicle is of less horsepower, gross weight or (in case of a passenger-carrying commercial motor vehicle) seating capacity, for which a lesser fee is prescribed, **applicant shall not be entitled to a refund.**

3. License plates may be transferred from a motor vehicle which will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles. The owner shall pay a transfer fee of two dollars if the newly purchased vehicle is of horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, not in excess of that of the vehicle which will no longer be operated. When the newly purchased motor vehicle is of greater horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a greater fee is prescribed, the applicant shall pay a transfer fee of two dollars and a pro rata portion of the difference in fees. When the newly purchased vehicle is of less horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a lesser fee is prescribed, **the applicant shall not be entitled to a refund.**

* * *

8. Upon the transfer of ownership of any currently registered motor vehicle wherein the owner cannot transfer the license plates due to a change of vehicle category, the owner may surrender the license plates issued to the motor vehicle and receive credit for any unused portion of the original registration fee against the registration fee of another motor vehicle. Such credit shall be

⁸ RSMo Cum. Supp. 2012.

granted based upon the date the license plates are surrendered. **No refunds shall be made on the unused portion of any license plates surrendered for such credit.**

(Emphasis added.) Section 301.121⁹ provides:

1. When the owner of a commercial motor vehicle registered in excess of fifty-four thousand pounds returns the license plates to the director of revenue as provided in section 301.120, but not for a license suspension or revocation, the owner shall receive a refund or credit of any pro rata amount to be determined by the calendar quarters remaining before expiration of the license plates. Such refund or credit shall be granted based upon the date the license plates are surrendered to the director of revenue. Any credit or refund may be applied toward any subsequent application for a Missouri registration only if a commercial motor vehicle. Any refunded portion of a registration fee which was distributed according to the provisions of article IV, section 30(b) of the Constitution of Missouri shall be refunded proportionately from state, city and county funds.

Several provisions in § 301.140¹⁰ allow an owner to transfer license plates from one motor vehicle to another. However, in this case, Grieshaber did not transfer license plates and every provision on this subject in § 301.140 expressly denies a refund.

Section 301.121 provides for a refund of certain amounts paid when a license plate is surrendered. This section, however, does not apply to Grieshaber because it only applies to commercial vehicles registered in excess of fifty-four thousand pounds. Grieshaber did not allege in her complaint that the motor vehicle in question is a commercial vehicle in excess of fifty-four thousand pounds.

We have found no provision of law allowing a refund to Grieshaber, nor does Grieshaber direct us to any such provision. Neither the Director nor this Commission can change the law.¹¹ We have no authority to allow a refund under these circumstances.

⁹ RSMo. Cum. Supp. 2012.

¹⁰ § 301.140.2, .3, and .8.

¹¹ *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. 1985).

Summary

Grieshaber is not entitled to a refund of fees paid for the renewal of license plates to her motor vehicle.

SO ORDERED on December 17, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner